

Following a guilty plea, Robert S. Pickett appeals his sentence for Manufacturing Methamphetamine¹ as a class B felony. Pickett presents the following restated issues for review:

1. Did the trial court err in identifying aggravating circumstances?
2. Is Pickett's sentence appropriate in light of the nature of the offense and his character?

We affirm.

In November 2005, the State charged Pickett with Count I, manufacturing methamphetamine as a class B felony; Count II, possession of methamphetamine as a class D felony; Count III, possession of anhydrous ammonia while in possession of a firearm as a class C felony; and Count IV, possession of a syringe as a class D felony. In January 2006, Pickett posted bond and was released from jail. Thereafter, Pickett went to Hamilton County, Ohio and was charged with additional crimes relating to drugs.² Pickett failed to appear for a hearing relating to this Ohio charge, and the Ohio court issued a warrant for his arrest. Pickett returned to Indiana, where he committed and was charged with two additional offenses—possession of marijuana and manufacturing methamphetamine—in Jennings County. In March 2006, the trial court revoked Pickett's

¹ Ind. Code Ann. § 35-48-4-1 (2005), currently recodified at I.C. Ann. § 35-48-4-1.1 (West, PREMISE through 2007 1st Regular Sess.). We note that the statute under which Pickett was charged is for “dealing” methamphetamine, and the State alleged that he violated this statute by possessing with the intent to manufacture methamphetamine, which equates to the commission of dealing methamphetamine. The record, however, refers to Pickett's crime as “manufacturing” methamphetamine. For the sake of simplicity and consistency, we will refer to the conviction as one for manufacturing methamphetamine.

² According to the presentence investigation report (PSI), Pickett was charged with illegal manufacture of drugs and possession of drugs.

bond in this case. After Pickett was arrested, he escaped from jail and was later charged with escape as a class C felony under a separate cause number.

In February 2007, Pickett entered into a plea agreement, wherein he agreed to plead guilty to the class B felony manufacturing methamphetamine charge in exchange for the State's dismissal of the remaining three charges. Although not a part of the plea agreement, the record reveals that the State also dismissed the charges in the two Jennings County cases that were filed when Pickett was out on bond. The plea agreement left the term of Pickett's sentencing open to the trial court's discretion but provided that Pickett's sentence would be served consecutively to his sentence for his escape conviction, to which he also pleaded guilty.

During the sentencing hearing, the trial court identified the following aggravating factors: (1) Pickett's criminal history, which the trial court noted included three felony convictions and three misdemeanor convictions; (2) the nature and circumstances of the crime, including the fact that Pickett was operating a mobile methamphetamine lab from his car, which the trial court considered "an extremely hazardous condition to the motoring public[;]" (3) Pickett's prior probation revocation; and (4) Pickett's active warrant for his pending charges from Hamilton County, Ohio. *Appellant's Appendix* at 67. The trial court also found the following mitigating factors: (1) Pickett pleaded guilty; (2) Pickett had obtained a GED; (3) Pickett's work history; and (4) Pickett's candor and willingness to take responsibility for his crimes. The trial court determined that the aggravators outweighed the mitigators, sentenced Pickett to fifteen years with four years suspended to probation, and, pursuant to the plea agreement, ordered that his

sentence be served consecutively to his eight-year sentence for escape. Pickett now appeals his sentence for manufacturing methamphetamine.

We initially note that because Pickett's offense was committed after the April 25, 2005, revisions of the sentencing scheme, we review Pickett's sentence under the current advisory sentencing scheme. When evaluating certain sentencing challenges under the advisory sentencing scheme under *Anglemeyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218, we first confirm that the trial court issued the required sentencing statement that included "reasonably detailed reasons or circumstances for imposing a particular sentence." *Id.* at 491. Second, the reasons or omission of reasons given for choosing a sentence are subject to review on appeal for an abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482. We note that the weight given to those reasons, *i.e.*, to particular aggravators or mitigators, is not subject to appellate review. *Id.* Finally, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). *Id.* Even if a trial court abuses its discretion by not issuing a reasonably detailed sentencing statement or in its statement concerning aggravators and mitigators, we may choose to review the appropriateness of a sentence under Rule 7(B) instead of remanding to the trial court. *Id.*

1.

Pickett contends the trial court erred in its consideration of aggravating circumstances. Pickett first argues that the trial court should not have considered one of his three felony convictions as an aggravator. Pickett does not challenge the fact that his criminal history was a proper aggravating circumstance and concedes that the trial court

properly considered his felony convictions for possession of marijuana and escape; nevertheless, Pickett asserts the trial court improperly considered his November 1999 conviction in its determination of aggravators. The PSI showed that this conviction was for driving while suspended as a class D felony.³ During the sentencing hearing, the State contended that the conviction was actually a felony habitual traffic violator conviction, while Pickett asserted that he was convicted of class D felony driving while suspended. There is no dispute that Pickett's conviction was a felony conviction, and there is no question that a defendant's criminal history is a proper aggravating circumstance. Thus, the trial court did not err in considering this felony conviction as part of Pickett's criminal history.

Pickett also contends the trial court erred in considering his active warrant from Ohio as an aggravating circumstance because it was an improper consideration of pending charges. A sentencing court may properly consider as an aggravating factor pending charges not reduced to convictions because they reflect the defendant's character and indicate a risk of future crime. *See Bacher v. State*, 722 N.E.2d 799 (Ind. 2000); *Tunstall v. State*, 568 N.E.2d 539 (Ind. 1991). Therefore, the trial court did not err when considering this aggravator.

³ We note that Pickett's counsel included Pickett's PSI in his Appellant's Appendix. We remind the parties that Ind. Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Indiana Administrative Rule 9(G)(1) provides that the information in a PSI "is excluded from public access and is confidential." Indiana Trial Rule 5(G)(1) requires that such documents be separately identified and "tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

Pickett contends his fifteen-year sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

Pickett attempts to minimize the nature of the offense by arguing that he manufactured methamphetamine to support his own addiction and that there was no evidence that he sold methamphetamine or injured anyone other than himself. Our review of record regarding the nature of the offense, however, reveals that Pickett had a methamphetamine lab in his car, and, as the trial court noted, such action posed a significant hazard to the public.

As to Pickett's character, the record reveals that forty-year-old Pickett has a criminal history—including, two convictions for possession of marijuana and multiple convictions for driving while suspended—and previously had his probation revoked. Pickett was charged with other crimes—two in Jennings County and two in Ohio—while he was out on bond in this case. Furthermore, after Pickett had his bond revoked and was arrested, he escaped from jail. During the sentencing hearing, Pickett admitted that he

was a methamphetamine addict and that he used marijuana. All these factors demonstrate Pickett's disregard for the law and unwillingness to conform even after receiving criminal punishment.

Based on the nature of the offense and Pickett's character, we conclude that the trial court's imposition of a fifteen-year sentence for the commission of class B felony manufacturing methamphetamine is not inappropriate.

Judgment affirmed.

ROBB, J., and MATHIAS, J., concur.